



DIRECTIVE 2020-042

July 17, 2020

RE: JOINT USE AGREEMENT BETWEEN KENT STATE UNIVERSITY AND WESTERN RESERVE FOLK ARTS ASSOCIATION, INC.

Kent State University has been granted appropriations contained in House Bill 481 of 133rd General Assembly in the amount of four hundred fifty thousand dollars. Kent State University will use the funds to improve the facility owned by Western Reserve Folk Arts Association, Inc. As required by Ohio Administrative Code section 3333-1-03, Kent State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than twenty years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation

Agency staff reviewed the agreement and posted its recommendations to the Department's website for the purpose of providing a period of public comment before final approval by the Chancellor. The materials posted for comment and the joint use agreement are attached to this document.

Based on my review of staff recommendations, I hereby approve the Joint Use Agreement between Kent State University and Western Reserve Folk Arts Association, Inc.

This directive will take effect immediately.

Randy Gardner
Chancellor

JOINT USE AGREEMENT

(For capital funds released to institutions for facilities not owned by the institution)

This Joint Use Agreement (“**Agreement**”) is entered into by and between **Kent State University** (“**University**”), an instrumentality of the State of Ohio, created under Chapter 3341 of the Ohio Revised Code, whose address is 2nd Floor Library, Executive Offices, Kent, OH 44242, and Western Reserve Folk Arts Association, Inc. (“**Association**”), a State of Ohio non-profit corporation, whose address is 175 East Main Street, Kent, OH 44240.

WHEREAS, the 132nd General Assembly has enacted Substitute House Bill Number 292 (H.B. 292), which includes Section 207.150 that provides for appropriation C270J9 of capital improvement resource directed to the University for the use and further enhancement of the Facility (defined below) by Association in cooperation with the University, in the sum of Four Hundred Fifty Thousand Dollars (\$450,000.00).

WHEREAS, the University will submit to the Controlling Board a request for the release of the \$450,000.00 appropriation herein defined which will be used by Association for capital improvements to the Facility (defined below).

WHEREAS, in consideration of the University’s assistance in the release of the above-mentioned appropriation and in accordance with the terms of this Agreement, Association has agreed to provide the University community with access and use to the Facility in accordance as set forth herein.

WHEREAS, Ohio Administrative Code §3333-1-03(E) requires a public institution to submit to the Chancellor of the Ohio Department of Higher Education a joint use agreement that contains the requirements in (E)(1)-(11) for review and approval.

WHEREAS, University has demonstrated that the value of the use of the facility or equipment is reasonably related to the amount of appropriation through the worksheet included in this Agreement as **Attachment “A.”**

NOW, THEREFORE, in consideration of the mutual benefits hereunder, it is hereby agreed to between the parties as follows:

1. **Facility or equipment owned, to be built or purchased by nonprofit or public body.** The facility to be renovated is the Kent Stage, located at 175 East Main Street, Kent, OH 44240 (“**Facility**”). The Facility is owned by Kent Stage Properties, LLC, and the Association occupies and manages the Facility pursuant to a long-term lease agreement

which for operation of the Facility. The duration of the lease between Kent Stage Properties, LLC and the Association exceeds the duration of this Agreement.

2. **Use of the facility or equipment by public institution; Term.**

(a) In consideration of the University's role in this Agreement, the University will have access to the Facility in accordance with the following:

- (i) The Association will waive its per-use rental and production cost of the Facility to University for up to ten (10) events annually during the term of this Agreement for University use as referenced in Attachment A, hereby incorporated. The dates/times of the University's use is subject to Facility availability. The Association shall provide a basic production package to support University events at the Facility including basic sound, lighting, equipment, and personnel. The University shall be responsible for the cost of any of production needs that are not provided in basic production package.
- (ii) Students, faculty, and staff will receive a \$2 per ticket discount by showing a valid Kent State University ID when purchasing tickets. In 2018, the Association sold nearly 40,000 tickets to its shows. Estimating that roughly one sixth of patrons in future years will be students, KSU's students will gain \$13,200 in savings annually from a student discount.
- (iii) The Association will provide at least 100 concert tickets at no cost annually to University. Association shall determine, at its reasonable discretion, the concerts and amount of tickets for each concert. Notwithstanding the preceding, no more than 6 tickets per concert shall count toward the 100-ticket total.

(b) This Agreement is subject to approval by the Ohio Department of Higher Education and shall begin when the University has access to the facility and will continue for a period of twenty (20) years, after which time Association's obligations will terminate unless otherwise extended.

3. **Reimbursement of funds.** In the event the University's right to use the facility pursuant to Section 2 above is terminated for any reason prior to twenty (20) years from the commencement date, the Association shall remit to the State of Ohio, a prorated portion of the H.B. 292 funds which shall be calculated by dividing the funds contributed by the State of Ohio by twenty (20) and multiplying that sum by twenty (20) less the number of full years the facility is utilized by the University.

4. **Use of funds.** The funds provided under this Agreement shall only be used by the Association for capital improvements to the Facility as provided for in H.B. 292, and not operating costs.
5. **Insurance for facility and hold harmless.** The Association shall acquire and maintain general liability insurance at commercially reasonable amounts to cover both the improvements and the services performed under this Agreement and the University shall be a named additional insured on such policy for the purpose of the capital improvements. The Association shall hold the University, its officers, trustees and employees and the State of Ohio harmless from any obligations, expenses, liabilities or claims or any kind arising out of: (i) the construction, general operation or maintenance costs of the Facility and/or (ii) the University, its officers, trustees, or employees or the State of Ohio being named as a defendant in or party to any lawsuit or adjudicatory proceeding, if such lawsuit or adjudicatory proceeding arises out of an action or omission, or an alleged action or omission, of the Association, its officers, trustees or employees, including, but not limited to, the Association's failure or alleged failure to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation.
6. **Compliance with federal, state and local law.** The Association shall comply with all applicable federal, state and local laws as well as state administrative regulations including but not limited to the applicable rules in Chapter 9, 123 and 153 of the Ohio Revised Code and associated regulation of the Ohio Administrative Code.
7. **Competitive bidding; Prevailing Wage.** The Association, in connection with the Project and the expenditure of State of Ohio-appropriated funding, shall: (i) follow competitive bidding procedures identified in Ohio Revised Code Chapter 153 for contracts for construction, including, but not limited to, publishing advertisements to seek bids, receiving sealed bids and awarding contracts to the lowest responsive and responsible bidders; and (ii) the Association will comply with the prevailing wage requirements described under ORC Chapter 4115, including, but not limited to paying laborers and mechanics performing work on the Project the prevailing wage rates as determined by the Ohio Department of Commerce, Wage and Hour Bureau.
8. **Appropriation administrative fee.** The University shall be reimbursed for administrative costs incurred as a result of the Project. Such administrative costs shall be six thousand

seven hundred fifty dollars (\$6,750.00) which is equal to one and one-half percent of the appropriation and shall be paid to the University upon receipt of the appropriation.

9. **Amendments.** Amendments to this Agreement shall be in writing signed by the Association and the University and shall require approval of the Ohio Department of Higher Education prior to taking effect.
10. **Payment.** An approved Controlling Board Request will release funds to the University. After release of funds, the Association shall submit to the University an appropriate invoice/invoices for payment along with documentation of competitive bidding and prevailing wage, including, but not limited to, published advertisement and bid tab confirming the contract was awarded to the lowest responsive and responsible bidder and a payroll report. Upon review and approval of submitted request for payment, the University shall transfer the appropriate funds to the Association.
11. **Review and inspection.** The Association shall, upon request, supply the Ohio Department of Higher Education with all pertinent records which measure the nature and extent of use of the Facility by University, the terms and conditions governing such use and the specific benefits derived by the University under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date set forth below.

KENT STATE UNIVERISTY

By:  5/21/2020
Mark M. Polatajko Date
Sr. Vice President for Finance and Administration

Approved as to
legal form and
sufficiency by
Douglas
Kubinski

Digitally signed by
Approved as to legal
form and sufficiency by
Douglas Kubinski
Date: 2020.05.21
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2020.009.20063

WESTERN RESERVE FOLK ARTS ASSOCIATION, INC.

By:  5/21/20
Date
Print: Thomas L. Simpson

ATTACHMENT "A" - Joint Use Agreement Worksheet

Project: Kent Stage Improvement Project

Date: _____

Section I: State appropriation information.

- 1. Amount of state appropriation provided: \$450,000.00
- 2. Estimated annual debt service on the appropriation: \$34,595
- 3. Term of the state bond, in years: 20

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. <u>Rental/Production Fees Waived</u>	<u>\$ 20,000.00</u>	<u>20</u>
b. <u>KSU Ticket Discount</u>	<u>\$ 13,200.00</u>	<u>20</u>
c. <u>Event Tickets</u>	<u>\$ \$3,000</u>	<u>20</u>
d. _____	<u>\$</u>	_____
e. _____	<u>\$</u>	_____
f. _____	<u>\$</u>	_____

(* List additional uses on separate page as needed.)

Section III: Value Analysis

A). Rental/production Fees Waived—The Association will waive both the rental and production fees for the University’s use of the Facility ten (10) times annually. The facility charges \$1,500 for rental, as well as a \$500 production cost, which includes sound, lighting, stage equipment, and basic sound/light production and security personnel. This \$2,000 package will be provided to KSU 10 times per year for sanctioned university events, and will be subject to the Facility’s availability.

B). KSU ticket discount—Students, Staff, and Faculty will receive a \$2 per ticket discount by providing a valid KSU identification card. In 2018, the Association sold nearly 40,000 tickets to its shows. Estimating that roughly one eighth of patrons

in future years will be students, staff, or faculty, the university will gain \$13,200 in savings annually from a student discount.

C). Event Tickets—The Association will provide at least 100 concert tickets at no cost annually to University. Association shall determine, at its reasonable discretion, the concerts and amount of tickets for each concert. Notwithstanding the preceding, no more than 6 tickets per concert shall count toward the 100-ticket total. The average ticket price at the Kent Stage is \$30.00. The Kent Stage hosts 80-100 ticketed events per year.